

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal NO. 191 OF 2006

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATE : 27th April, 2007.

Heard Shri Gordey, learned counsel, for the appellant and Shri Markandeywar, learned counsel for the respondents.

The appellant is the original defendant. A suit was filed by the respondent/plaintiff for eviction of the defendant and for possession of the suit property. According to the plaintiff, the plaintiff was the owner of the suit property and the defendant was the tenant of the plaintiff. In the rent control proceedings filed between the parties, the defendant had denied the title of the landlord and had claimed title in himself. The Rent Controller, therefore, dropped the rent control proceedings and directed the parties to approach the civil Court to decide the question of ownership.

The trial Court held that the plaintiff had succeeded in proving his title to the suit property and

the defendant was the tenant in the suit property. The trial Court further held that the defendants have further failed to prove that he was not the tenant in the suit property. The trial Court, therefore, held that the plaintiff was entitled to possession of the suit premises and also to a declaration of his ownership.

The defendant challenged the judgment passed by the trial Court in Regular Civil Appeal No. 473 of 2001. The appellate Court confirmed the findings recorded by the trial Court. Both the Courts concurrently recorded that the tenancy of the defendant was determined under Section 111(g) of the Transfer of Property Act by forfeiture as the Courts held that by virtue of the declaration of the title of the plaintiff and his predecessors in title and the claim of the defendant to the title in the suit property clearly brought the action within the provisions of Section 111(g) of the Transfer of Property Act. The Courts considered the fact that the plaintiff had issued notice to the defendant terminating his tenancy which the defendant admittedly received on 10.03.2004 and the notice was a clear Fifteen days notice.

A submission made on behalf of the appellant to the effect that the decree of eviction could not have been passed and the tenancy could

not have been terminated without seeking permission from the Rent Control Authorities is not acceptable as permission of the Rent Control Authorities is not necessary before terminating the tenancy in a case where lessee renounces his character as such by setting up title in third person or in himself. Since notice of forfeiture of tenancy was issued in this case, both the Courts held that the plaintiff was entitled to a grant of decree of possession.

By an order dated 14.09.2006, this Court had directed the appellant to deposit an amount of Rs. 25,000/- in this Court within a period of two weeks from the date of the order. It appears that the appellant has deposited the aforesaid amount on 27.09.2006. The amount of Rs.25,000/-, so deposited by the appellant, should be adjusted towards the damages and mesne profits to which the respondent is held to be entitled.

The respondent would be entitled to make an application for withdrawal of the amount before the executing Court.

The findings recorded by both the Courts are pure findings of fact and do not give rise to any substantial question of law.

Since no substantial question of law arises

for consideration in this Second Appeal, the same is dismissed with no order as to costs.

JUDGE

APTE